

Advisory Opinion

IECDB AO 2011-01

February 24, 2011

Subject: outstanding loan/conflict of interest

TO ALL INTERESTED PERSONS:

Pursuant to Iowa Code section 68B.32A(12) and rule 351—1.2, the Iowa Ethics and Campaign Disclosure Board issues this opinion on whether an outstanding loan creates a conflict of interest. We note at the outset that the Board's jurisdiction is limited to the application of Iowa Code chapter 68A and 68B, Iowa Code section 8.7, and rule in Iowa Administrative Code chapter 351. Advice in a Board opinion, if followed, constitutes a defense to a subsequent complaint based on the same facts and circumstances.

FACTUAL STATEMENT:

An individual appointed as director of an executive branch agency was until recently a partner in a company that will likely submit bids to this agency. This executive branch employee owned a 5% interest in the company prior to accepting his agency appointment. Under this executive branch employee's partnership agreement with the company, his appointment as director required him to sell his company stock back to the company. The partnership agreement names a third party responsible for valuing the stock. Under the partnership agreement, the company has up to 10 years to pay this executive branch employee for his stock with interest. Once the valuation is completed, this executive branch employee will receive a promissory note from the company.

QUESTION:

The question is whether an individual who is employed by the state or a political subdivision of the state may take any official action or perform any official duty with respect to a bid from a company that owes him money as part of a mandatory stock buy-back agreement?

OPINION:

Iowa Code section 68B.2A(1)(c) states "[a]ny person who serves or is employed by the state or a political subdivision of the state shall not engage in any . . . outside employment or an activity that is subject to the official control, inspection, review, audit, or enforcement authority of the person, during the performance of the person's duties of office or employment."

We are of the opinion that the outstanding promissory note is related to an outside employment or activity that is subject to the executive branch employee's official duty. This individual has a personal interest in seeing that the company succeeds so that the promissory note will be paid. Thus, the promissory note creates a conflict of interest with respect to any bid from the company to the agency now directed by this individual.

Iowa Code section 68B.2A(2) states an individual shall "[c]ease the outside employment or activity" or

"Publicly disclose the existence of the conflict and refrain from taking any official action or performing any official duty that would detrimentally affect or create a benefit for the outside employment or activity. For purposes of this paragraph, "official action" or "official duty" includes, but is not limited to, participating in any vote, taking affirmative action to influence any vote, granting any license or permit, determining the facts or law in a contested case or rulemaking proceeding, conducting any inspection, or providing any other official service or thing that is not available generally to members of the public in order to further the interests of the outside employment or activity."

We believe 68B.2A(2) prohibits this executive branch employee from taking any official action or performing any official duty with respect to any bid from the company as long as the company owes the individual any money.

BY DIRECTION AND VOTE OF THE BOARD

James Albert, Board Chair
Patricia Harper, Vice Chair
Gerald Sullivan
John Walsh
Saima Zafar
Carole Tillotson

Submitted by: Megan Tooker, Board Legal Counsel